IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 WRIT PETITION NO. 9576 OF 2015

LAXMAN DAGDU KOLHE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO. 7828 OF 2014
JYOTI DINESH CHOUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO. 8719 OF 2014
CHAMELIBAI KRUSHNA MAHAJAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioners in WP/9576/15 : Dighe Pravin S
Advocate for Petitioners in WP/7828/2014 & WP/8719/201 :Mr. Vijay V. Deshmukh
AGP for Respondents 1 to 4 State:Mr. R. B. Bagul
Advocate for the Respondent Credit Society : Mr. P. R. Katneshwarkar

CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.
DATE : 5th January, 2017

ORDER:

1. These petitions are filed basically assailing the order of the Hon’ble Minister, wherein the directions are given to pay small depositors first so also seeking further directions against the respondent Cooperative Credit Society to make payment to the depositors, which were detailed by the Committee appointed in that regard.

2. Mr. Dighe the learned counsel for the petitioner submits that large chunk of deposits are made by the petitioners and other depositors. The respondent Credit Society is not paying the said amount to the depositors. A Committee was constituted as per the Government Resolution dated 13th August, 2008. The said committee consisted of the responsible officers of the State Government such as the Collector, Commissioner of Police, Special Auditor, etc. The said committee held meetings, considered grievance of the depositors and prepared list of 91 depositors to whom the amount is required to be paid. The respondent Credit Society is bound by the said report, however, the amount is not being paid by the Respondent Credit Society as per the said report. The Hon'ble Minister interfered in the matter and passed order directing payment of amount to the small depositors. The said order was passed on 30th July, 2014 at the behest of the respondent Credit Society. The Hon'ble Minister did not have any jurisdiction to pass such order. The respondent Credit society is not taking any steps to recover the amount though more than 233 recovery certificates are issued in its favour. Large scale illegalities were committed by the Credit Society.

3. The learned counsel for the petitioners in Writ Petition No.7828/2014 and Writ Petition No.8719/2014 also adopts the arguments of Mr. Dighe, the learned counsel.

4. Mr. Katneshwarkar, the learned counsel for respondent Credit society submits that it is not that the steps are not being taken by the respondent Credit Society to make payment to the depositors and to recover the amount from the defaulters/borrowers. The Assistant Register is required to cooperate in the recovery proceedings. The payments are being made. The respondent Credit Society is striving hard to make payment so also to recover the amount from the defaulters. An amount of Rs.2.66 crores is in fixed deposit with Khamgaon Urban Cooperative Bank. If the said amount is allowed to be withdrawn by the respondent Credit Society, then out of the said amount, Rs. 1.66 crore will be utilized for making payment to the depositors and remaining Rs.1 crore is required to honour the orders passed by the Consumer Court and other day to day expenses.

5. According to the learned counsel, the petitioner cannot be given precedence qua the other depositors. The petitioner cannot maintain such prayer before

this Court. The learned counsel relies on the decision of the Full Bench of this Court in **Shamrao Vitthal Cooperative Bank Ltd. Vs. Padubidri Pattabhiram Bhat and another, reported in 1993 (I) Mh.L.J. page 1.** Mr. Dighe, the learned counsel for the petitioner relies on the judgment of the Division Bench of this Court in case of **Daling s/o Shamsing Rajput Vs. The State of Maharashtra and others, reported in 2006(3)Mh.L.J. 592** to submit that the directions can be given to the authorities.

6. We have considered the submissions canvassed by the learned counsel for the respective parties.

7. Upon going through the contentions raised by the respective parties in their pleadings, it is manifest that large number of depositors are required to be paid the amount and their anxiety in not getting the amount is not totally unfounded. Huge deposits are collected by the respondent credit society and satisfactory repayment is not being made to these depositors. Fixed deposits have matured but the payments are not being made to these depositors. Huge sums are sanctioned to the members of some family as it appears from the report under section 89A of the Maharashtra Cooperative

Societies Act. Depositors cannot be left in lurch. Credit Society is required to take sincere steps to make payment to the depositors.

8. Keeping the amount of fixed deposits in other Bank would not serve any purpose. The same would not be in the interest of the credit society nor in the interest of the depositors. The said amount can be utilized to make payment to the depositors. Small depositors certainly have to be given preference. Only because these small depositors have not come before the Committee, they cannot be deprived of the right to get their amount.

9. Considering the aforesaid conspectus of the matter, we pass following order:

O R D E R

i. The respondent Credit Society shall take sincere steps to recover the amount from the defaulters so also shall take steps to execute the certificates issued in its favour under section 101 of the Maharashtra Cooperative Societies Act, expeditiously. Even the Register, Cooperative Societies shall endavour to dispose of the proceedings under Section 101 filed by the respondent Credit Society, expeditiously, preferably within six months, of course after following the principles of natural justice and the due procedure.

ii. The respondent Credit Society is allowed to withdraw the amount of deposit of Rs.2.66 crores along with accrued interest, kept with Khamgaon Urban Cooperative Bank. Out of the said amount, the respondent credit society may retain Rs.50 lakhs towards their day to day expenses and to meet the orders of the Consumer Court and shall utilize the remaining amount which would be more than Rs.2.25 crores for the payment of the depositors.

iii. Small depositors should be given preference so also those depositors who are in need of money, considering the exigencies, the payment to them also shall be considered.

iv. Depositors below Rs.15000/- may be paid to the extent of 70% to 75% of the deposit as far as possible. The Register Cooperative Societies shall supervise the said payment to the depositors. The respondent Credit Society shall submit its report to the Register, Cooperative Societies of having disbursed the amount to the depositors from the amount received from Khamgaon Urban Cooperative Bank Ltd.

v. The respondent credit society shall endeavour to make payment to the depositors from the recoveries that would be made so also from the day to day transactions.

10. Writ petitions are accordingly disposed of. No costs.

(K. L. WADANE, J.) **(S. V. GANGAPURWALA, J.)**

JPC